

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

WILLIAM E. SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 3:12-CV-7358

CORRECTIONAL OFFICER BERLIN;
CORRECTIONAL OFFICER MARCUM;
CORRECTIONAL OFFICER BLANKENSHIP;
CORRECTIONAL OFFICER GOODWIN;
CORRECTIONAL OFFICER VANMETER; AND
CORRECTIONAL OFFICER LAMBERT,

Defendants.

ORDER

On December 20, 2013, the Honorable Cheryl A. Eifert, United States Magistrate Judge, issued Proposed Findings and Recommendations that Plaintiff William E. Smith's Motion for Partial Summary Judgment Against Defendants Berlin, Marcum, Blankenship, and Lambert be denied because genuine issues of material fact exist. Plaintiff, acting *pro se*, objects and argues that Defendants' failure to comply with discovery requests has thwarted his motion. Plaintiff asserts that, if Defendants complied with discovery, his motion would be granted. Therefore, Plaintiff requests this Court to conduct a *de novo* review of all the records in this case and sanction Defendants for failing to produce discovery.

Upon *de novo* review, the Court **DENIES** Plaintiff's objections and request for sanctions. It is clear that discovery is on-going in this case before the Magistrate Judge. If

Plaintiff believes he is entitled to certain discovery and/or if he believes Defendants are failing to comply with discovery, he may address those issues with the Magistrate Judge through the normal discovery process. In addition, the Court has reviewed the Findings and Recommendations and agrees with the Magistrate Judge that partial summary judgment is inappropriate because there are genuine issues of material fact preventing partial summary judgment from being entered in Plaintiff's favor.

Accordingly, the Court **DENIES** Plaintiff's objections (ECF No. 167), **ADOPTS** and **INCORPORATES** the Proposed Findings and Recommendations of the Magistrate Judge (ECF No. 165), and **DENIES** Plaintiff's Motion for Partial Summary Judgment (ECF No. 141).

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented parties.

ENTER: January 17, 2014



ROBERT C. CHAMBERS, CHIEF JUDGE